

REMARKS

This amendment is submitted in response to the non-final Office Action mailed on March 4, 2004. Claims 1-19 are pending in this application. In the Office Action, Claims 1-19 are rejected under 35 U.S.C. §112, second paragraph and Claims 1-19 are rejected under 35 U.S.C. §103. In response Claims 1, 6, 8-10, 12-13, 16-19 have been amended, Claims 2-5 have been canceled and Claims 20-21 have been added. These amendments do not add new matter. In view of the amendments and/or for the response set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-19 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Patent Office alleges that the term “biscuit-like” is indefinite because the meaning and scope of such language cannot be determined. Applicants respectfully disagree that the term “biscuit-like” is indefinite. For example, biscuits are commonly known to one having ordinary skill in the art. Further, the specification describes that the biscuit-like mass comprises a mixture of baked biscuit particles (e.g. bread products) and a fat and maintains its biscuit-like consistency (e.g. texture and appearance) on storage and consumption. In addition, the specification recites that the preferred biscuit-like mass of the invention is generally a liquid that is pumpable at about 15 to 35° C and has a soft to crispy consistency at ice confectionery temperature of about -10° C to -25° C, as this allows it to be processed as a coating or inclusion with ice confectionery. See, specification, page 2, lines 15-19 and page 3, lines 27-32. Accordingly, the metes and bounds of the term “biscuit-like” as described in the specification are clear to one having ordinary skill in the art. In addition, Claim 1 has been amended to more clearly define the claimed product.

Applicants have amended Claim 6 and added Claims 20 and 21 to address the informalities cited by the Patent Office. Claims 20 and 21 do not add new matter and are fully supported in the specification, for example, at page 3, lines 12-17. Claims 9-10 have been amended to address the informalities cited by the Patent Office regarding the term “ice confection.” Claims 17 and 18 have been amended to address the informalities cited by the Patent Office regarding the term “liquid biscuit-like mass.”

Applicants respectfully disagree with the Patent Office's assertion that Claim 7 is vague and indefinite because the form of the product claimed is unclear. Claim 7 is directed to a composite frozen confection having the claimed biscuit-like mass and an ice confectionery. The form of the composite frozen confection can be any suitable shape or mold such as, for example, sticks, top cones, cups or sandwiches. See, specification, page 4, lines 23-24. Consequently, one having ordinary skill in the art would know what forms the composite frozen confection of Claim 7 can be in view of the specification.

Based on at least these noted reasons, Applicants believe that Claims 1-19 fully comply with 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that the rejection of Claims 1-19 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-19 are rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 3,508,926 to Werbin et al. ("*Werbin*"). Applicants believe these rejections are improper and respectfully traverse them for at least the reasons set forth below.

Applicants having amended independent Claims 1 and 16 to recite, in part, a biscuit-like mass comprising a mixture of particles of baked biscuit and a fat with the exclusion of emulsifier. Applicants respectfully submit that all of the claimed elements are not taught or suggested by the cited reference.

Werbin is directed to treating particles of food material containing gelatinized starch. See, *Werbin*, column 2, lines 17-23. The food particles are coated with shortening and an emulsifier in melted form and the food particles are agglomerated with a small amount of water, preferably in the form of a sugar syrup. It is quite clear in *Werbin*, at column 2, lines 47-53, that an emulsifier is required to obtain the desired result. It is also clear that the treated food particles are dispersed in an ice cream mass so that there is no visible biscuit residue.

In contrast to *Werbin*, the present claims are directed to a biscuit-like mass comprising, in part, of a mixture of baked biscuit particles and a fat without any emulsifier being required. Further, because the process in *Werbin* teaches using an emulsifier, adding some water and requires a drying step for forming the food particulates to eventually be used as particulate inclusions in an ice cream mass, *Werbin* teaches away the present claims. For example, the present claims require no addition of emulsifier. Further, the present invention does not need a

rewetting or subsequent drying step. The cooked biscuit particulates are simply mixed with the fat in the absence of any emulsifier to produce the biscuit-like mass, which can be used as a coating, core or inclusion of a frozen confectionery. Although during the coating operation the enrobed ice confection product is "dried" (see Examples 1-2 and 6-7), this refers to the fact that the product is allowed to harden and optionally drip if there is excess liquid. It is not subjected to a drying step. Accordingly, one having ordinary skill in the art would not find the present claims obvious in view of *Werbin*.

For the reasons discussed above, *Werbin* does not teach, suggest, or even disclose the present claims, and thus, fails to render the claimed subject matter obvious for at least these reasons.

Accordingly, Applicants respectfully request that the obviousness rejections with respect to Claims 1-19 be reconsidered and the rejections be withdrawn.

Claims 1-15 have also been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-10, 13 and 17 of co-pending Application 10/761,614. Applicants respectfully submit that the current amendments to independent Claims 1, 7, 13, 18 and 20 disclose novel and non-obvious subject matter with respect to the claims of U.S. Patent Application Number 10/761,614.

Accordingly, Applicants respectfully request that the provisional rejection of Claims 1-15 under obviousness-type double patenting be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY _____

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

Dated: June 22, 2005